

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Twin City Capital, LLC d/b/a Small Business America	)	Complaint No. 10-S2956188
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: June 3, 2019**

**Released: June 3, 2019**

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we address a petition filed by Twin City Capital, LLC d/b/a Small Business America (TCC) asking us to reconsider a Consumer Policy Division (Division) order finding that TCC changed a consumer's telecommunications service provider without proper authorization verified in accordance with the Commission's slamming rules.<sup>1</sup> On reconsideration, we affirm that TCC's actions violated the Commission's rules and deny the Petition.<sup>2</sup>

**II. BACKGROUND**

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>3</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent and follow specific verification procedures before a carrier change may occur.<sup>4</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.<sup>5</sup> If the carrier uses an independent third party to verify the subscriber's consent, the rules require, among other things, that the verifier elicit confirmation that "the person on the [verification] call is authorized to make the carrier change."<sup>6</sup>

3. In 2008 the Commission amended the third-party verification rules requiring that "any description of the carrier change transaction . . . not be misleading" and emphasizing that third-party

<sup>1</sup> See Twin City Capital, LLC d/b/a/ Small Business America, Petition for Reconsideration Taken Pursuant to Delegated Authority (filed June 17, 2013) (Petition).

<sup>2</sup> See 47 CFR §§ 64.1100-64.1190.

<sup>3</sup> 47 U.S.C. § 258(a).

<sup>4</sup> See 47 CFR § 64.1120.

<sup>5</sup> See *id.* § 64.1120(c). Section 64.1130 of the Commission's rules details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>6</sup> *Id.* § 64.1120(c)(3)(iii).

verifiers must “convey explicitly that consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service [or a] bill consolidation.”<sup>7</sup> The Commission explained that “[t]he record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call.”<sup>8</sup> The Commission further stated that “such practices are misleading and unreasonable, and warrant specific treatment in our rules.”<sup>9</sup>

4. The Division received a complaint alleging that TCC had changed Complainant’s telecommunications service provider without authorization.<sup>10</sup> Pursuant to our rules, the Division notified TCC of the complaint.<sup>11</sup> In its response, TCC stated that the Complainant’s authorization was received and confirmed through a third-party verification recording (TPV).<sup>12</sup> The Division reviewed the complaint, TCC’s response, and the TPV, and determined that TCC’s actions violated the Commission’s slamming rules.<sup>13</sup> Specifically, the Division stated that “[a] switch from one carrier to another carrier differs from merely making changes to the customer’s account” and emphasized that “any description of the carrier change transaction . . . shall not be misleading.”<sup>14</sup> TCC seeks reconsideration of the *Division Order*.

### III. DISCUSSION

5. Based on the record before us, we affirm the *Division Order* and deny TCC’s Petition. As discussed below, we find that TCC violated the Commission’s slamming rules when TCC’s verifier failed to confirm that the Complainant wanted to make a *carrier change* and used misleading language that obscured the true purpose of the call.

6. Our rules set forth detailed procedures that carriers using a TPV to verify consumer authorization must follow. While the rules do not prescribe specific language that a TPV must include, they do require that all third-party verifiers “elicit, at a minimum the identity of the subscriber; [and] confirmation that the person on the call is authorized to make the *carrier change* . . . .”<sup>15</sup> The Commission has specifically stated that it “seek[s] to ensure that verifiers confirm the consumer’s intent to receive service *from a different carrier*, regardless of whether that is phrased as a ‘change,’ a ‘switch,’ or any other non-misleading term.”<sup>16</sup> The carrier’s verifier must confirm that the person on the call: (a) is

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<sup>7</sup> See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Fourth Report and Order, 23 FCC Rcd 493, at 501-02, paras. 18-20 (2008) (*Fourth Report and Order*); 47 CFR § 64.1120(c)(3)(iii).

<sup>8</sup> *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

<sup>9</sup> *Id.*

<sup>10</sup> See Informal Complaint No. 10-S2956188 (filed Nov. 23, 2010).

<sup>11</sup> See 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>12</sup> As discussed above, TPV is one method a carrier may use to verify and record a consumer’s authorization to change his or her preferred long distance carrier. *Id.* § 64.1120(c)(3).

<sup>13</sup> See *Twin City Capital, LLC d/b/a/ Small Business America, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 7253 (CGB 2013) (*Division Order*).

<sup>14</sup> See *Division Order*, 28 FCC Rcd at 7255, para. 4.

<sup>15</sup> 47 CFR § 64.1120(c)(3)(iii) (emphasis added).

<sup>16</sup> *Fourth Report and Order*, 23 FCC Rcd at 502, para. 20 (emphasis added).

authorized to make a carrier change; and (b) actually wants a carrier change—not merely an upgrade to existing service, bill consolidation, or any other transaction.<sup>17</sup>

7. TCC’s TPV fell short of our rules. Its verifier asked the Complainant if he was the “authorized person to accept this change on the account.”<sup>18</sup> This question was misleading and did not confirm that the person would be authorizing a change that would result in receiving service *from a different carrier*. The Commission has been clear that changing or upgrading service is not equivalent to changing carriers, and TCC’s TPV statement suggesting that it was seeking verification that the person was authorized to make account changes was misleading and violated section 64.1120(c)(3).<sup>19</sup>

8. Despite using this language, TCC argues that the TPV satisfied the Commission’s requirements; that the TPV did not include any misleading statements; and that the verifier’s use of the phrase “changes on the account” clearly relates to “changing the long distance carrier.”<sup>20</sup> TCC maintains that the Division focuses on a “single word in a specific sentence” in the TPV to reach a conclusion and “fails to consider the question immediately following. . . .”<sup>21</sup> TCC acknowledges, however, that its verifier asked the Complainant if he was authorizing TCC to make “changes on the account.”<sup>22</sup> We thus cannot find that its TPV did not include misleading statements, consistent with our rules and precedent.

9. The Commission has explained that “some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose.”<sup>23</sup> Thus, “the scripts used by the independent third-party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”<sup>24</sup> Providing “context” for the consumer through other questions and statements, as TCC attempted to do here, does not elicit the consumer’s authorization for a carrier change as the rules require. As the Commission has stated on numerous occasions, this rule is crucial to protecting consumers, particularly where the Complainants contend that they did not intend to change carriers at all.<sup>25</sup>

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<sup>17</sup> 47 CFR § 64.1120(c)(3)(iii).

<sup>18</sup> See TPV and TPV transcript provided with TCC’s complaint response. The verifier also asks the person on the call whether he/she “understand[s] that this is a new long distance service for all long distance calls.” See *Division Order*, 28 FCC Rcd at 7255, para. 4.

<sup>19</sup> See *Central Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10396-97, para. 10 (2016); see also, e.g., *Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding “the verifier’s question, ‘Do you have authority to make changes to your long distance service?’ did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*”); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same); *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723, 3730-31, paras. 20-21 (2017) (*Advantage Forfeiture Order*).

<sup>20</sup> See Petition at 5.

<sup>21</sup> *Id.* at 2. Specifically, TCC states that the Division failed to consider the language authorizing the “switch” and “changing of long distance service appearing several times throughout the TPV.” See *id.* at 2.

<sup>22</sup> See Petition at 2-3 (emphasis added).

<sup>23</sup> *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

<sup>24</sup> *Id.* (quoting *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

<sup>25</sup> See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3730, para. 21; *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13714, para. 8 (2015).

10. For the reasons stated above, we affirm the *Division Order* and deny TCC's Petition.

**IV. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, sections 1.106 and 1.719 of the Commission's rules, 47 CFR §§ 1.106, 1.719, and authority delegated by sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, the Petition for Reconsideration filed by Twin City Capital, LLC d/b/a Small Business America, on June 17, 2013, IS DENIED.

12. IT IS FURTHER ORDERED that this Order is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone  
Deputy Chief  
Consumer and Governmental Affairs Bureau